

ARKANSAS SUPREME COURT

No. CR 07-102

ALPHONSO SHUNTLY WILSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 17, 2007

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [CIRCUIT COURT OF
PULASKI COUNTY, CR 2004-1186,
HON. JOHN W. LANGSTON,
JUDGE]

APPEAL DISMISSED.

PER CURIAM

A jury convicted appellant Alphonso Shuntly Wilson of capital murder and sentenced him to life imprisonment without parole. This court affirmed the judgment. *Wilson v. State*, 365 Ark. 664, ___ S.W.3d ___ (2006), and the mandate issued on April 4, 2006. Appellant filed in the trial court pro se petitions for postconviction relief under Ark. R. Crim. P. 37.1, and the trial court denied appellant's petition. This appeal ensued.

We have granted one extension of time to file the appellant's brief and denied a request for appointment of counsel. *Wilson v. State*, CR 07-102 (Feb. 22, 2007) (per curiam). Appellant now seeks further extension of time to file the brief.

Upon examination of the record in its entirety, we must dismiss the appeal. The trial court found that the petition was timely filed, citing to an apparent clerical error. However, the record does not reflect that appellant filed a timely petition. We have repeatedly stated that it is the appellant's burden to bring up a sufficient record. *See Davidson v. State*, 363 Ark. 86, 210 S.W.3d

887 (2005). Here, the record shows two petitions were filed, but only one was timely filed and neither could be properly considered by the trial court for procedural reasons.

The record shows that one petition was file-marked June 21, 2006, but that petition was filed seventy-eight days after the mandate issued. Arkansas Rule of Criminal Procedure 37.2(c) requires petitions for postconviction relief are to be filed within sixty days from the date the mandate issued. The trial court considered the June 21, 2006, petition as having been filed on May 26, 2006, and deemed it timely. The order reflects that the Pulaski County Circuit Clerk's records indicate a petition was filed on May 26, 2006, but the record before us does not contain a petition with a May 26, 2006, file mark on it. Nor does the record otherwise indicate a petition was filed on that date. The record contains a petition file-marked May 23, 2006. While the petition marked as filed June 21, 2006, was verified, the earlier petition was neither signed nor verified. Based upon the record before us, we must conclude that the petition that was timely filed was not properly considered by the trial court in accord with Ark. R. Crim. P. 37.1(d), which requires that a petition be verified. Although the trial court considered the later petition to have been filed on the earlier date, and did not deny the petition based upon its lack of verification, the trial court could not consider the issues in the petition. *See Shaw v. State*, 363 Ark.156, 211 S.W.3d 506 (2005) (per curiam). Because it appears that the earlier petition was not verified as required by Rule 37.1(d), dismissal of the petition was appropriate. As in *Shaw*, the trial court lacked jurisdiction to consider the later, verified petition, which was not timely filed.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996)

(per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam). It is clear here that appellant cannot prevail because the record does not establish that the trial court had jurisdiction to consider his petition.

Appeal dismissed.